IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 23672 of 2005(R)

CMA.37/1999 of DISTRICT COURT, KASARAGOD
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PETITIONER:
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1. STATE OF KERALA,
   REP. BY THE CONSERVATOR OF FORESTS,
   NORTHERN CIRCLE, KOZHIKODE.

2. THE DIVISIONAL FOREST OFFICER, KANNUR.

BY SPL. GOVERNMENT PLEADER FOR FORESTS MR. RANJITH THAMPAN

RESPONDENTS:
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1. V. BHASKARAN, S/O. AMBUKKAN,
   REPRESENTED BY HIS POWER OF ATTORNEY HOLDER,
   KUNHIRAMAN, S/O. SATTYAN, RESIDING AT PALAR HOUSE,
   MANIMOOLA P.O., VIA. CHENGALA, KASARGOD.

2. THE DISTRICT JUDGE, KASARGODE.

R1 BY MR. K.A.LALAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C)No. 23672 OF 2005

DATED THIS THE 12th July 2007

J U D G M E N T

In this writ petition under Article 227, the petitioners namely the State represented by Conservator of Forests, Northern Circle, Kozhikode and the Divisional Forest Officer, Kannur are challenging Ext.P2 judgment of the District Court, Kasaragod allowing an appeal preferred by the first respondent against Ext.P1 order of confiscation passed by the 2nd respondent regarding vehicle jeep bearing No.KBE 3054 involved in a forest offence . It is stated that forest produce consisting of cut rosewood timber removed from the reserve forest was seized while the same was being transported in the vehicle invoking Section 52 of the Kerala Forest Act. Stump mahazar was prepared from forest area. Confiscation order was passed by the 2nd respondent, authorized officer on being satisfied that the vehicle was used for committing forest offences under Section 61 A of the Kerala Forest Act. Against that confiscation order, Civil Miscellaneous Appeals were preferred before the 2nd respondent, District Court. By a common order on 15-1-1997, the District court set aside the order and remanded the matter for fresh consideration. Pursuant to that the

authorized officer afforded opportunity to the first respondent for cross examination of witnesses and thereafter again passed a confiscation order on 10-4-1999, copy of which is produced as Ext.P1. Against Ext.P1, the first respondent owner filed C.M.A.No.37/1999 and one Padmamnabhan, driver filed C.M.A.No.38/1999 before the 2nd respondent. The 2nd respondent court on considering the appeals set aside Ext.P1 and allowed the appeal preferred by the owner. Ext.P2 is copy of the judgment of the District Court. On noticing that in spite of service of notice the first respondent is not entering appearance, I directed the Government Pleader to serve a copy of the writ petition on the Advocate who was appearing for the first respondent before the District Court and accordingly a copy was served on Advocate Mr. K.A.Lalan. Inter alia, Mr.Lalan has stated in the acknowledgement issued by him regarding the notice that after finalization of the case he has not retained the back files and that the same were returned to the first respondent. He has also stated that he is not aware of the present whereabouts of the first respondent. However, he has assured that he shall endeavor to send a letter to him requesting him to come and collect the copy of the writ petition which was served on him.

2. Today when the case came up for hearing, there was no appearance for the first respondent and I have heard the submissions of Sri. Ranjith Thampan,Special Government Pleader for forest cases on behalf of the petitioners. He drew my attention to the judgment of this Court in **Chandrababu v. Sub Inspector of Police, 1988(2) K.L.T.529** and that of the Division Bench of this Court in **State of Kerala v. Mathew, 1995(2) K.L.T.772**. Sri. Ranjith Thampan addressed me extensively on the various grounds raised in the writ petition. He submitted that unless and until the person in charge of the vehicle had taken reasonable and necessary precautions against the use of the vehicle for illegal purposes, the person is not entitled for the benefit of sub-section (2) of Section 61-A of the Kerala Forest Act. It was the burden of the first respondent owner to establish all the three postulates of the section. Counsel submitted that having found that the accused have admitted their guilt and that the offences have been compounded. The learned Judge should not have given importance to the value of the timber seized, charges paid to the driver and such other irrelevant considerations. The learned Special Government Pleader also referred to the judgment of the Supreme court in **State of W.B. v. Gopal Sarkar,(2002(1)SCC**

495); D.F.O., Kothamangalam v. Sunny Joseph,(2002(3)KLT 641) and **State of W.B. & Others v. Sujit Kumar Rana, (2004(4) SCC 129)** and submitted that the entire reasoning of the learned District Judge was contrary to the principles laid down by the Supreme Court in those decisions. The nature of confiscation proceedings are not penal and therefore the learned District Judge's observation that a notice would have been served on the owner "to account for the use of the vehicle on the relevant date when the timber produce was transported in that vehicle" is totally unwarranted. Confiscation of a vehicle envisages a civil liability though it is true that commission of a forest offence is one of the principle requisites for passages an order of confiscation. Gravity of the guilt of the accused is an irrelevant factor while deciding whether a confiscation order should be passed.

3. Having considered the submissions made before me by Mr.Ranjith Thampan in the light of the principles laid down in the division Bench of this court in **Mathew's case (supra)** and also the judgment of Thomas J. in **Chandrababu's case (supra)**, I have no difficulty to hold that that the learned District Judge was in error while interfering with Ext.P1 order of confiscation. As noticed by the Division Bench, sub-section (2) of Section 61-A can operate only on the

contribution of three postulates. The first is that it the owner was totally unaware of the illicit use, the second is that he had taken all reasonable and necessary precautions against such use and the third is that the person in charge of the vehicle (driver in this case) has also taken reasonable and necessary precautions against such use. In the instant case the first respondent has not been successful in establishing all the three postulates.. The burden was on him and he has not discharged that burden. The result is that I set aside Ext.P2 in so far as it pertains to C.M.A.No.37/1999 Ext.P1 will stand revived in full.

The writ petition is allowed as above.

(PIUS C.KURIAKOSE, JUDGE)

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